U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: [redacted] Office: Texas Service Center Date: JAN 2 2001

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER:

[redacted]

Public Copy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Identifying [illegible] prevent clearly [illegible] invasion of personal privacy

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Texas Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is an individual who seeks classification as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(4), to serve as a monk. The director denied the petition determining that the petitioner had failed to establish that he is qualified to work as a monk. The director also found that the petitioner's employer had failed to establish its ability to pay the proffered wage.

On appeal, counsel argues that the petitioner is eligible for the benefit sought.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

> (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
>
> (ii) seeks to enter the United States--
>
> (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
>
> (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
>
> (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and
>
> (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

On his Form I-360, Petition for Amerasian, Widow or Special Immigrant, the petitioner indicated that he is a forty-year-old single male native and citizen of Laos. The petitioner submitted a photocopy of his Application for Migration to Australia, which he completed on July 10, 1990. According to this document, the petitioner was divorced in March 1984. The petitioner entered the United States as a visitor on July 15, 1993 and his authorized period of admission expired on January 13, 1994. The petitioner indicated that he had never worked in the United States without permission.

The first issue to be examined is whether the petitioner has established that he is qualified to work as a monk.

8 C.F.R. 204.5(m)(3)(ii)(D) requires that a petitioner submit evidence establishing that the alien is a nun, monk, or religious brother.

In a letter dated June 24, 1997, [redacted] chairman of the board of directors of the [redacted] Buddhist Temple, stated that:

> I have closely observed the way in which [the petitioner] has conducted Buddhist religious ceremonies and practices since he has been here, and I have made inquiries as to his credentials as a Buddhist monk at the [redacted] Monastery in Utah where [he] served as Monk from July, 1993 until he came here in February of 1996. I have also seen documents tending to establish his credentials as an ordained Buddhist monk . . .
>
> Based on my personal observations, the documentation I have seen, and the verbal affirmations of the Buddhist leaders in Utah, I am utterly convinced that [the petitioner] can be nothing other than an ordained Buddhist Monk, authorized to conduct all services and duties incumbent on that position.

In a personal statement, the petitioner stated that:

> [redacted] was given the name [redacted] at his birth on [redacted] . . .
>
> When Laos fell to the Communists in 1975, Mr. [redacted] was forced to flee to Thailand. In a Thai refugee camp he took the name of [redacted] for political reasons . . . In 1983, at the age of 33 he was ordained by a committee of senior monks in Thailand . . .

[redacted] has used this name throughout his adult life for all civil purposes. His birth record and ordination documents are in the name of [redacted]

The petitioner submitted a photocopy of an Ordination for Monks and Novices certificate. According to this certificate, [redacted] was ordained a novice on August 20, 1983 and a monk on August 20, 1984.

On September 23, 1997, the director requested that the petitioner submit additional information. In response, the petitioner submitted photocopies of reports prepared by the United Nations High Commission on Refugees and his entry documents into Australia. All of these documents indicate that [redacted] and [redacted] are the same person; however, all of these documents were either prepared by the petitioner, or prepared based on information provided by the petitioner.

On appeal, counsel argues that "the alternate name that appears on the ordination document is proven to be the same individual through records received from the Australian Embassy." The petitioner submits photocopies of previously-submitted documents as well as several affidavits from individuals who attest to the services rendered by [redacted] at the Ban Na Pho Refugee Center in Thailand from 1983 to 1990. The petitioner also submitted photographs and newspaper articles.

The evidence submitted in support of this petition does not establish that the petitioner is qualified to perform the services of a monk. All ordination documents and statements concerning activities in the Thai refugee camp indicate that [redacted] is a monk. The petitioner claims that he is [redacted] and that he took the name [redacted] when he fled to Thailand in 1975. The petitioner has not offered any explanation for why the ordination certificate issued in 1983 was not issued in the name of [redacted] Further, the petitioner has not explained why all affidavits referencing the work of [redacted] in Thailand did not reference the work of [redacted] The ordination occurred, and these duties were performed, subsequent to the petitioner's purported change of name and, therefore, it is not clear why the name "[redacted]" was not used. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Matter of Ho, 19 I&N Dec. 582 (BIA 1988). Moreover, the petitioner has not submitted any independent, corroborative evidence to document his purported name change. As was previously stated, all documents provided by the Australian Embassy were either prepared by the petitioner or were prepared based on information provided by the petitioner. Simply going on record without supporting

documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). The newspaper articles and photographs are not evidence of religious training. Accordingly, the petitioner has failed to establish that he is qualified to perform the duties of a monk.

The next issue to be examined is whether the petitioner's prospective employer has the ability to pay the proffered wage.

8 C.F.R. 204.5(g)(2) states, in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage . . . Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner's prospective employer indicated that it will pay the petitioner a monthly salary of $500.00. On September 23, 1997, the director requested that the petitioner submit evidence that his prospective employer had the ability to pay the proffered wage. In response, the president of the petitioner's prospective employer stated that the temple had been providing for the petitioner since February 1996. On appeal, the petitioner submits photocopies of 1997 Forms W-2 that were issued to members of his prospective employer's board of directors. The evidence submitted in support of this petition is not sufficient. 8 C.F.R. 204.5(g)(2) provides a list of documents that may be submitted to support a petitioner's claim to be able to pay a wage. The petitioner has not submitted any of these documents. Accordingly, the petitioner has not established its ability to pay the proffered wage in accordance with 8 C.F.R. 204.5(g)(2).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.